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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 986

SOMA PETO,

Petitioner,

vs.

THOMAS HOWELL,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

J. ROBERT COHLER,
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Chicago, Illinois,
Counsel for Petitioner.

THE BLAKISTON-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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PETITION FOR WRIT OF CERTIORARI.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Now comes Soma Peto, petitioner, and respectfully petitions this Honorable Court to grant a writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit to review a judgment of that Court affirming a judgment of the District Court of the United States for the Northern District of Illinois, Eastern Division.

A certified transcript of the Record in the case, including the proceedings in said Circuit Court of Appeals, is furnished herewith, in compliance with Rule 38 of this Court.

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED.

Soma Peto, petitioner, since 1910, has been continuously engaged in the grain business (R. 74, 162). In 1927, he became and still is associated with B. C. Christopher & Co. of Kansas City, Mo., a large grain house which was and still is a member of various exchanges, including the Chicago and Kansas City Boards of Trade (R. 74, 75).

Thomas Howell, respondent, in 1931 was a large grain operator. Through use of various "dummy" accounts, through falsification of reports to the Grain Futures Administration (R. 48), he acquired approximately 8,000,000 bushels of July 1931 corn and thereby "cornered" the July, 1931 corn market on the Chicago Board of Trade. The total visible commercial supply of corn in the United States at the time of respondent's "corner" was only 8,123,000 bushels of which 7,673,250 were in Chicago, Respondent had acquired 7,440,975 bushels, constituting 97% of all deliverable corn in Chicago and 90% of the entire visible commercial supply in the United States. The details of the "corner" are set forth in the record (R. 41-50) and also in the opinion of the Circuit Court of Appeals reported in *Peto* v. *Howell*, 101 Fed. (2nd) 353, which was the appeal from the first trial, but where the facts of the monopoly were the same as in the last trial.

This action was brought under Title 15, Sec. 15, U. S. C. A., to recover damages sustained by petitioner as the result of respondent's monopoly of the trade in corn in interstate commerce in violation of Title 15, Chap. I, Sec. 2, U. S. C. A., commonly known as the Sherman Anti-Trust Act.

Respondent pleaded in defense: 1st, denial of violation

of Anti-Trust Law; 2nd, petitioner's transactions on the Chicago Board of Trade were gambles and hence no recovery could be had.

At the first trial, the Trial Court directed a verdict for respondent at close of petitioner's case on the ground that petitioner had not proved a monopoly by the respondent. On appeal to the Circuit Court of Appeals for the Seventh Circuit, the judgment of the Trial Court was reversed, the Court holding that the respondent had "cornered" the July 1931 corn on the Chicago Board of Trade and thereby monopolized the trade in corn in interstate commerce in violation of the Act aforesaid. This case is reported in *Peto* v. *Howell*, 101 Fed. (2nd) 353.

Upon a retrial of the case, the jury returned a verdict in favor of petitioner, finding all issues against the respondent. The Trial Court granted respondent a new trial from which petitioner could not appeal, the order not being final and appealable.

On the final trial, the Court directed a verdict in favor of petitioner on the issue of monopoly but permitted the jury to pass upon the affirmative defense of gambling. The jury found in favor of the respondent on that issue and the Trial Court entered judgment in favor of the respondent. On appeal to the Circuit Court of Appeals, the judgment was affirmed. See *Soma Peto* v. *Thomas Howell*, 117 Fed. (2nd) 249.

This petition is directed to a review of the last mentioned decision of the Circuit Court of Appeals.

JURISDICTION.

1. This is a suit involving diversity of citizenship, involving more than $3,000.00 exclusive of interest and costs, arising under the Sherman Anti-Trust Act, Title 15, Chap. I, Sections 2 and 15, U. S. C. A.

2. The jurisdiction of this Court is invoked under Sec. 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. A., Sec. 347).

3. The date of the judgment which petitioner seeks to have reviewed is January 29, 1941.

QUESTION PRESENTED.

Whether the Circuit Court of Appeals erred in holding that respondent had presented substantial evidence from which a jury could find that the transactions of the petitioner and his broker constituted gambling under Ill. Rev. Stat. 1939, Chap. 38, Sec. 328.

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

The discretionary power of this Court to grant a Writ of Certiorari is invoked upon the following grounds:

1. The Circuit Court of Appeals has decided an important matter of national importance involving transactions on the Chicago Board of Trade, in direct conflict with the Illinois law construing the Illinois Act on Gambling.

2. Has rendered an opinion in conflict with the opinions of other Circuit Courts of Appeal as to what constitutes substantial evidence.

Wherefore it is respectfully submitted that the Petition for a Writ of Certiorari to the Circuit Court of Appeals for the Seventh Circuit should be granted.

J. ROBERT COHLER,
Counsel for Petitioner.